§ 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (b). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner''.

Subsec. (c). Pub. L. 106–113 substituted ''Director'' for ''Commissioner'' wherever appearing and, in second sentence, substituted ''All fees available'' for ''Fees available'' and ''shall be used'' for ''may be used''.

Subsec. (d). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], substituted ''Director'' for ''Commissioner''.

1998—Subsec. (c). Pub. L. 105–358 substituted first sentence for former first sentence which read as follows: ''Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.''

1991—Subsec. (c). Pub. L. 102–204, § 5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.''

Subsec. (e). Pub. L. 102–204, § 4, added subsec. (e).

1982—Subsec. (b). Pub. L. 97–258 struck out '', the provisions of section 725e of title 31, United States Code, notwithstanding'' after ''United States''.

Subsec. (c). Pub. L. 97–247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96–517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361(b) and 376(b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).

1975—Pub. L. 94–131 inserted '', except as provided in sections 361(b) and 376(b) of this title,''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–358 effective Oct. 1, 1998, see section 5 of Pub. L. 105–358, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96–517, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94–131, set out as an Effective Date note under section 351 of this title.

AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE

Pub. L. 107–273, div. C, title III, § 13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

''(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

''(1) title 35, United States Code; and

''(2) the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

''(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§ 13101–13106) of title III of div. C of Pub. L. 107–273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

''(1) the Committees on Appropriations and Judiciary of the Senate; and

''(2) the Committees on Appropriations and Judiciary of the House of Representatives.''

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100–703, title I, § 102, Nov. 19, 1988, 102 Stat. 4674, provided that: ''Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.''

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–607, § 2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, § 13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted ''Examination of Application'' for ''Examination of Applications'' in heading of chapter 12.

1982—Pub. L. 97–256, title I, § 101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted ''Patent and Trademark Office'' for ''Patent Office'' in heading of chapter 13.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 282 of this title.

CHAPTER 10—PATENTABILITY OF INVENTIONS

AMENDMENTS

1990—Pub. L. 101–580, § 1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term ''invention'' means invention or discovery.

(b) The term ''process'' means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms ''United States'' and ''this country'' mean the United States of America, its territories and possessions.

(d) The word ''patentee'' includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(e) The term ''third-party requester'' means a person requesting ex parte reexamination under section 302 or inter partes reexamination under section 311 who is not the patent owner.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4603], Nov. 29, 1999, 113 Stat. 1536, 1501A–567.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase ''invention or discovery'' and its derivatives throughout the revised title. The present statutes use the phrase ''invention or discovery'' and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–113 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, § 4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word ''art'' has been replaced by ''process'', which is defined in section 100. The word ''art'' in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. ''Process'' has been used as its meaning is more readily grasped than ''art'' as interpreted, and the definition in section 100(b) makes it clear that ''process or method'' is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;[1] or

(f) he did not himself invent the subject matter sought to be patented, or

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such per-

[1] So in original. The semicolon probably should be a comma.